

**FORMAL OPINION
2001-F-08**

DATE ISSUED: September 19, 2001

REQUESTED BY: Richard J. Riha, Burleigh County State's Attorney

QUESTION PRESENTED

May a county officer or employee issue a refund of a tax or a fee in an amount that is less than \$5?

ATTORNEY GENERAL'S OPINION

It is my opinion that a county officer or employee may not issue a refund of a tax or a fee in an amount that is less than \$5.

ANALYSIS

The 2001 North Dakota Legislative Assembly enacted House Bill 1332, which was codified as N.D.C.C. § 11-10-29 and provides as follows:

Notwithstanding any other provision of law, a person is not entitled to a tax or fee refund, to be paid or approved by a county officer or employee, unless the amount of the refund is five dollars or more.

(Emphasis supplied.)

Words in a statute are to be understood in their ordinary sense; that is the meaning an ordinary person could get from reading the section. N.D.C.C. § 1-02-02; State v. Velasquez, 602 N.W.2d 693, 695 (N.D. 1999). The word "entitled" in an ordinary sense as used in this statute means "to furnish with a right or claim to something." The American Heritage Dictionary 457 (2d coll. ed. 1991). Similarly, "to entitle is to give a right or legal title to" or "[t]o qualify for; to furnish with proper grounds for seeking or claiming." Black's Law Dictionary 477 (5th ed. 1979). See also Fitts v. Terminal Warehousing Corp., 93 S.W.2d 1265, 1267 (Tenn. 1936).

Therefore, under the language in N.D.C.C. § 11-10-29 a taxpayer has no right or claim to a refund under the statute and no grounds for seeking or claiming a refund unless the amount of the refund is five dollars or more.

Counties are creatures of the North Dakota Constitution and may act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority. (Citation omitted.) As a political subdivision of the State, [counties'] rights and powers are determined and defined by law. (Citation omitted.)

McKenzie County v. Hodel, 467 N.W.2d 701, 707-708 (N.D. 1991) (VandeWalle, J., concurring).

A county and its departments have "such powers as are expressly conferred by statute or are necessarily implied in order to effectuate the purposes for which it was created." Walstad v. Dawson, 252 N.W. 64, 67 (N.D. 1934).

No statute grants or implies authority for a county to pay a refund of a tax or fee where a statute specifically removes from a taxpayer the right or grounds to seek or claim a refund.

EFFECT

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Wayne Stenehjem
Attorney General

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